

**Butcher's Union Local No. 506, United Food and Commercial Workers International Union, AFL-CIO (Alpha Beta Company) and Aldo Abronzino. Case 32-CB-1175**

December 16, 1982

### DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER

Upon a charge filed on May 5, 1982, and an amended charge filed on June 21, 1982, by Aldo Abronzino, an individual, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 32, issued a complaint dated June 30, 1982, against Butcher's Union Local No. 506, United Food and Commercial Workers International Union, AFL-CIO, herein called Respondent. The complaint alleges in substance that Respondent violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended, by attempting to cause Alpha Beta Company to discharge Aldo Abronzino, James Olsen, Greg Goulart, and Danny Terrones, in violation of Section 8(a)(3), and by threatening the employees with discharge, because they resigned from Respondent and for reasons other than their failure to tender periodic dues uniformly required as a condition of retaining membership in Respondent.

Copies of the charge and the complaint were duly served on Respondent and Alpha Beta. On July 14, 1982, Respondent filed an answer admitting the factual allegations in the complaint but denying the commission of any unfair labor practices.

On July 30, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 9, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Thereafter, on September 3, 1982, Respondent filed its Motion for Summary Judgment and a memorandum in support thereof, and on September 7, Alpha Beta filed a brief in support of the General Counsel's Motion for Summary Judgment.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

<sup>1</sup> In its Motion for Summary Judgment, Respondent requested oral argument. That request is denied as the pleadings and the briefs adequately present the issues for consideration.

### Ruling on the Motion for Summary Judgment

Although Respondent filed a timely answer which admits all factual allegations of the complaint constituting elements of the violations charged therein, Respondent denies that its conduct violated the Act. Thus, Respondent does not contest the factual underpinnings of the complaint but, rather, bases its defense on the legal argument that those facts are not, or should not be, violative of Section 8(b)(1)(A) and 8(b)(2) of the Act.

Respondent asserts that the basic issue here is whether a union may compel membership, in addition to the payment of dues and fees, as a condition to satisfy a lawful union-security obligation.

In support of its position that a union may lawfully compel membership, Respondent contends, *inter alia*, that *Hershey Foods Corporation*, 207 NLRB 897 (1973), *enfd.* 513 F.2d 1083 (9th Cir. 1975), was wrongly decided; that Board law prior to *Hershey Foods*, and pertinent Supreme Court rulings,<sup>2</sup> does not mandate the *Hershey Foods* result; and that a review of the legislative history reveals that the congressional intent was to outlaw only the closed shop, but to permit the union shop—including the obligation to accept membership.

We continue to adhere to *Hershey Foods*, and the well-established principles underlying that decision. Thus, it has long been settled that "[m]embership" as a condition of employment is whittled down to its financial core,<sup>3</sup> and that a union may not seek the discharge of employees for any reason other than the failure to tender periodic dues and initiation fees.<sup>4</sup> With regard to this issue, the Board has had the opportunity to consider the intent of Congress and has stated that:

Throughout the amendment to the Act, Congress evinced a strong concern for protecting the individual employee in a right to refrain from union activity and to keep his job even in a union shop. Congress carefully limited the sphere of permissible union security, and even in that limited sphere accorded the union no power to effect the discharge of nonmembers except to protect itself against "free rides."<sup>5</sup>

It is thus clear that "full" union membership may not be required of an employee as a condition of employment, and that the term "membership" as used in Section 8(a)(3) represents a financial obliga-

<sup>2</sup> *N.L.R.B. v. General Motors Corp.*, 373 U.S. 734 (1963).

<sup>3</sup> *Id.* at 742.

<sup>4</sup> *Union Starch & Refining Company*, 87 NLRB 779 (1949), *enfd.* 186 F.2d 1008 (7th Cir. 1951), *cert. denied* 342 U.S. 815.

<sup>5</sup> *Id.* at 784-785, cited in *N.L.R.B. v. Hershey Foods Corporation*, *supra* at 1086. The *Hershey Foods* court has noted in this regard that the Federal courts of appeals have uniformly upheld the Board's construction of Sec. 8(a)(3) and 8(b)(2) in *Union Starch*.

tion limited to the payment of fees and dues. In sum, "while contracts requiring membership as a condition of employment are lawful within the meaning of the proviso to Section 8(a)(3), a union cannot lawfully compel, or an employer lawfully acquiesce in, the discharge of an employee except for failure to pay required dues and initiation fees."<sup>6</sup>

Accordingly, because we reject Respondent's legal arguments herein, and because Respondent concedes that there is no issue of fact to be litigated, we shall grant the General Counsel's Motion for Summary Judgement, and, as a consequence thereof, deny Respondent's Motion for Summary Judgment in its favor.

On the basis of the entire record the Board makes the following:

#### FINDINGS OF FACT

##### I. JURISDICTION

Alpha Beta Company, herein called Alpha Beta, a California corporation with an office and place of business in Milpitas, California, is engaged in the retail sale of grocery products and related items. During the past 12 months Alpha Beta, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and purchased and received goods and services from outside the State of California valued in excess of \$5,000.

We find, on the basis of the foregoing, that Alpha Beta is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and we find that Butcher's Union Local No. 506, United Food and Commercial Workers International Union, AFL-CIO, Respondent herein, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

The complaint alleges, and Respondent admits, the following facts:

<sup>6</sup> *Hershey Foods Corporation*, 207 NLRB at 897.

We also reject Respondent's contention that an analysis of the issue herein can be bifurcated into a consideration of the concept of membership standing alone, without regard to the consequences attendant to that membership. As the Ninth Circuit noted in *Hershey Foods*, "This controversy over the meaning of 'membership' is more than a semantic debate. A full union member is subject to union-imposed disciplinary measures enforceable in state courts." 513 F.2d at 1083.

At all material times herein, Alpha Beta and Respondent have been parties to a collective-bargaining agreement in an appropriate unit. The agreement contains a union-security clause with the following provisions:

#### Article II-B Union Security

Section (a) Every person performing work covered by this Agreement who is a member of the Union on the effective date of this Agreement shall, as a condition of employment or continued employment, remain a member of the Union. Every person employed to perform work covered by this Agreement shall, as a condition of employment, be a member of the Union or shall, within a period of thirty-one (31) days, become a member of the Union; and also upon the accumulation of thirty-one (31) days of work for the Employer shall become a member of the Union.

Section (b) The Employer shall discharge every person who has failed to comply with the provisions of Section (a) of this Article II-B immediately upon notice of such non-compliance and further agrees not to again employ or re-employ any person so discharged until he is a member of the Union.

Section (c) Membership in the Union shall be available to persons employed in work covered by this Agreement upon terms and qualifications not more burdensome than those applicable generally to other applicants for such membership.

On or about February 25, 1982, Aldo Abronzino, James Olsen, Greg Goulart, and Danny Terrones, members of Respondent and employees of Alpha Beta, each tendered to Respondent, and Respondent received, signed letters, containing the following text:

I hereby give notice that effective immediately, or if required by the constitution and bylaws, 30 days hereafter, I resign my membership in Butchers' Union Local #506.

I will, however, continue to pay dues uniformly required of a formal member.

After receiving the letters, Respondent, on or about March 15, 1982, sent letters, bearing the following text, to Abronzino, Olsen, Goulart, and Terrones:

This will acknowledge receipt of your letter indicating that you will continue to pay dues uniformly required of formal members.

Please be advised that we still considered [sic] you to be a member in light of the tender

of your dues and will continue to enforce all membership obligations upon you. We do not consider this to be an effective resignation of your membership obligations.

On or about March 25, 1982, Abronzino, Olsen, Goulart, and Terrones jointly sent a letter to Respondent, bearing the following text:

The undersigned are in receipt of a letter from you indicating that your labor organization still considers us to be members. Please be advised that we have followed all procedures set forth in the International's Constitution and the Local Bylaws for resignation, and that our resignations are effective as stated in our previous letters to you. Please be further advised that we consider your action a breach of the fiduciary duty Local 506 owes to each and every one of us. As you are aware, as employees in a unit represented by Local 506 and as former members of Local 506, the Union owes us the duty of fair representation. By making this blatantly [sic] illegal statement that Local 506 considers us to be members despite our resignations, we consider the Union to have breached its duty.

Furthermore, since the date of our resignations, the Union has harassed the undersigned by various actions. We consider this harassment to also be a breach of the Union's fair duty of representation and will hold your Union responsible and liable for any damages suffered by the undersigned.

Since we have effectively resigned, we do not consider it necessary to respond to any future correspondence from you regarding this matter. Our silence should not be construed as acceptance of any of your self-serving statements.

On or about April 6, 1982, Respondent sent a letter to each of the above-named employees bearing the following text:

This will acknowledge receipt of your March 25, 1982 communication.

We have carefully considered this matter and you must make a clear option. If you choose to resign your membership with the Local Union, you will not be complying with the Union security obligation contained in the Collective Bargaining Agreement. We will, therefore, have no choice but to ask your employer to discharge you forthwith. On the other hand, if you will continue to accept your membership obligation and continue to pay the regular dues and initiation fees as required of

other members, we will not ask that you be discharged.

If we do not hear from you within seven days of the date of this letter, we will assume that your resignation stands and that you do not intend to be a member of this labor organization. We will, therefore, invoke the Union security clause of the contract and ask that you be discharged forthwith. The deadline for respondent to this letter is April 1, 1982, at 5:00 P.M. So that there be no confusion, we ask that your response be in writing.

We are giving you this final warning so that you can make an intelligent decision as to your future course of action.

Thereafter, on or about April 16, 1982, Respondent sent letters to Alpha Beta concerning each of the above-named employees:

Enclosed you will find correspondence between this Local Union and [name of each discriminatee]. As the correspondence indicates [name] has chosen to resign from the Union and, therefore, is not complying with the Union security obligation contained in the Collective Bargaining Agreement between this Union and your organization.

We are, therefore, asking that he be discharged forthwith and that we be given confirmation of that discharge.

We are enclosing this correspondence so that you are aware of the man's resignation from this Union.

The record is clear that, on or about February 25, 1982, employees-members Abronzino, Olsen, Goulart, and Terrones each tendered his resignation from membership in Respondent, such resignation also stating that each would "continue to pay dues uniformly required of a formal member."<sup>7</sup> The record further reflects that, on April 6, Respondent threatened the employees with discharge, and, on April 16, requested Alpha Beta to discharge them, ostensibly on the ground that by choosing to resign they were not in compliance with the union-security clause in the collective-bargaining agreement. However, as discussed above, "under a valid union security agreement requiring union membership as a condition of employment, an employee who tenders the dues and fees uniformly required of members, but refuses to become a full-fledged member, is protected from discharge."<sup>8</sup> Accordingly, we find that by threatening

<sup>7</sup> There is no contention that the letters of resignation did not comport with usual procedures or conditions with respect to such matters. To the contrary, in its April 16 letter to Alpha Beta, Respondent acknowledged that each employee "has chosen to resign from the Union."

<sup>8</sup> *N.L.R.B. v. Hershey Foods Corporation*, *supra*, 513 F.2d at 1084.

the employees with discharge, and by requesting their discharge, because of their resignations and for reasons other than their resignations and for reasons other than their failure to tender uniformly required dues and fees, Respondent violated Section 8(b)(1)(A) and (2) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The aforesaid unfair labor practices, occurring in connection with the operation of Alpha Beta Company, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, and affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### V. THE REMEDY

Having found that Respondent engaged in unfair labor practices within the meaning of Section 8(b)(2) and 8(b)(1)(A) and Section 2(6) and (7) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

#### CONCLUSIONS OF LAW

1. Alpha Beta Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening Aldo Abronzino, James Olsen, Greg Goulart, and Danny Terrones with discharge because they resigned from Respondent and for reasons other than their failure to tender periodic dues and fees uniformly required as a condition of retaining membership in Respondent, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By attempting to cause Alpha Beta Company to discriminate against Aldo Abronzino, James Olsen, Greg Goulart, and Danny Terrones by seeking their discharge in violation of Section 8(a)(3) of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(2) and 8(b)(1)(A) and Section 2(6) and (7) of the Act.

5. The aforesaid unfair labor practices, occurring in connection with the operation of Alpha Beta Company, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Butcher's Union Local No. 506, United Food and Commercial Workers International Union, AFL-CIO, San Jose, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Attempting to cause Alpha Beta Company to discharge or otherwise discriminate against its employees in violation of Section 8(a)(3) of the Act.

(b) Threatening employees with discharge because they resigned from Respondent and for reasons other than their failure to tender periodic dues and fees uniformly required as a condition of retaining membership in Respondent.

(c) In any like or related manner restraining or coercing employees of Alpha Beta Company, Milpitas, California, in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Post at its business office, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."<sup>9</sup> Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter. Respondent shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Forthwith mail copies of said notice marked "Appendix" to said Regional Director after the copies have been signed as provided above for posting by Alpha Beta Company, if it so agrees, at places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>9</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX**

**NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

**WE WILL NOT attempt to cause Alpha Beta Company to discharge or otherwise discriminate against its employees in violation of Section 8(a)(3) of the Act.**

**WE WILL NOT threaten employees with discharge because they resigned their member-**

**ships and for reasons other than their failure to tender periodic dues and fees uniformly required as a condition of retaining membership.**

**WE WILL NOT in any like or related manner restrain or coerce employees of Alpha Beta Company in the exercise of their rights guaranteed to them by Section 7 of the Act.**

**BUTCHER'S UNION LOCAL NO. 506,  
UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
AFL-CIO**